

Washington State Auditor's Office
Whistleblower Report

**Department of Social and Health
Services**

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WASHINGTON
BRIAN SONNTAG
STATE AUDITOR



**Washington State Auditor
Brian Sonntag**

November 15, 2011

Susan Dreyfus, Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 11-027 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Special Investigations Manager Kim Hurley at (360) 725-5352 or Director of Special Investigations Jim Brittain at (360) 902-0372.

Sincerely,

BRIAN SONNTAG, CGFM
WASHINGTON STATE AUDITOR

BS:kh

cc: Jacob White, Public Disclosure and Ethics Administrator
Governor Chris Gregoire
Melanie de Leon, Executive Director, Executive Ethics Board

Whistleblower Investigation Report

State of Washington Department of Social and Health Services Special Commitment Center

ABOUT THE INVESTIGATION

Following two violent sexual assault cases in the 1980s, the Legislature created a task force to review state laws regarding the release of sex offenders from prison. In 1990, lawmakers passed the Community Protection Act, which resulted in:

- Increased criminal sentences for sex offenders.
- Requirements for sex offenders to register with local law enforcement agencies.
- Creation of an End of Sentence Review Committee.
- Creation of the Special Commitment Center, a mental health treatment facility for sex offenders operated by the Department of Social and Health Services (DSHS) on McNeil Island, where “sexually violent predators” may be civilly committed.

Near the end of an offender’s prison term, the End of Sentence Review Committee reviews the cases of individuals who the law defines as sexually violent predators. Specifically, “Sexually violent predator” means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility”.

If the offender, in the committee’s opinion, meets the legal definition of a “sexually violent predator”, the offender is referred to a psychologist who does an evaluation and makes recommendations to the Committee on whether civil commitment is appropriate.

The Committee considers the information from the psychologist and sends its recommendations regarding whether civil commitment is appropriate to local prosecutors who may pursue commitment at the Center. The King County Prosecutor’s Office or the state Attorney General process civil commitments, which the individual serves after completing a criminal sentence.

About 3 percent of the approximately 1,000 sex offenders released from prison each year are sent to the Center, which DSHS manages because it is a public mental health facility.

Individuals who are civilly committed are evaluated each year by a forensic expert specializing in assessing sex offenders and estimating the risk of re-offense. Leaving the Center requires a court order. Usually the first step is to be released to a Department-operated secure community transition facility which offers 24-hour supervision and security, and ensures the resident is provided sex offender treatment services. When the person leaves the facility for employment, treatment or other pre-approved activities, he or she is accompanied at all times by a professionally trained escort.

BACKGROUND

The state pays for the residents' medical costs while they are confined at the Center. Some routine medical services are performed at the Center, but individuals may receive certain medical attention off the island. Between July 1, 2009 and June 13, 2011, the Center spent \$2.6 million for off-island medical services.

In December 2010, we received a whistleblower assertion that the Center did not enter into contracts with medical providers, which resulted in a gross waste of public funds.

ASSERTIONS AND RESULTS

Assertion 1: The Special Commitment Center's Chief Financial Officer failed to obtain written contracts prior to obtaining and paying for medical services to residents.

We found reasonable cause to believe an improper governmental action occurred.

State law requires the Office of Financial Management to develop and maintain a system of internal controls. These internal controls are documented in the State Administrative and Accounting Manual, which requires written contracts for client services.

The Center paid more than \$2.5 million to 85 medical providers from July 1, 2010 to June 13, 2011 as follows:

| Health Care Provider | Amount Paid |
|----------------------|-----------------|
| 1 | \$ 916,028.87 |
| 2 | \$ 226,371.82 |
| 3 | \$ 156,704.46 |
| 4 | \$ 148,451.71 |
| 5 | \$ 101,392.00 |
| 6 | \$ 69,805.00 |
| 7 | \$ 54,062.10 |
| 8 | \$ 52,389.98 |
| 9 | \$ 44,912.00 |
| All Others | \$ 828,251.14 |
| Total | \$ 2,598,369.08 |

We judgmentally selected 16 medical providers paid by the Center from July 1, 2010 to March 13, 2011, which represented more than 90 percent of all payments during the period. We asked the Center for contracts with the providers and it could provide only one. Written contracts are required for client service contracts. Although we agree with the Center that some emergency medical procedures cannot be anticipated, making written contracts unfeasible, we believe written contracts are required between the Center and medical providers who frequently are used for medical services.

Assertion 2: The Special Commitment Center's Chief Financial Officer failed to adequately monitor payments to medical providers, resulting in a gross waste of public funds.

We found reasonable cause to believe an improper governmental action occurred.

The Center told us it does not pay the full amount billed by five of its medical providers. We asked the Center how it could deduct amounts from invoices without a contract in place. We were told that the Center initially worked with the Department of Corrections, which had contracts with these five medical providers. The contracts expired several years ago. When DSHS took over Center operations, it continued the practice, even without contracts in place. Staff at the Center told us that the providers accept these payments without questioning why the payment is less than the invoice.

Because the Center did not have contracts with these providers, we considered what pricing is appropriate for similar medical services provided to the state. We contacted Western State Hospital, which DSHS also administers. It has contracts with three medical providers. Two are paid Medicaid rates and one is paid at 110 percent of Medicaid rates. For all other payments to providers without contracts, the Hospital pays the Medicaid rate.

From July 1, 2009 to June 30, 2011, we found Center residents received medical services from two of three medical providers that have contracts with the Hospital. To ensure fairness in comparison, we reviewed medical prices charged to and paid by the Center, by procedure code, for those providers and compared them to the prices the Hospital would have paid under contract. We selected all invoices that exceeded \$1,000. Fifty-eight invoices totaling \$263,043 met this criterion, or 10 percent of all payments.

We found that the Center paid \$213,746.42 more than the Hospital would have paid under its contracts.

| Invoice | Amount invoiced by provider | Center discount | Center paid | Hospital may have paid assuming Medicaid rates | Center paid more than hospital |
|------------|-----------------------------|-----------------|--------------|--|--------------------------------|
| 1 | \$118,883.49 | \$ (23,776.70) | \$ 95,106.79 | \$ 15,928.00 | \$ 79,178.79 |
| 2 | \$ 17,632.49 | \$ (3,526.50) | \$ 14,105.99 | \$ 1,762.55 | \$ 12,343.44 |
| 3 | \$ 20,815.45 | \$ (4,163.09) | \$ 16,652.36 | \$ 4,735.50 | \$ 11,916.86 |
| 4 | \$ 12,898.22 | \$ (2,579.64) | \$ 10,318.58 | \$ 1,141.93 | \$ 9,176.65 |
| 5 | \$ 13,965.48 | \$ (2,973.10) | \$ 10,992.38 | \$ 4,075.50 | \$ 7,096.88 |
| 6 | \$ 10,203.68 | \$ (2,040.74) | \$ 8,162.94 | \$ 1,155.91 | \$ 7,007.03 |
| 7 | \$ 8,111.12 | \$ (1,622.22) | \$ 6,488.90 | \$ 931.36 | \$ 5,557.54 |
| 8 | \$ 6,811.96 | \$ (1,362.39) | \$ 5,449.57 | \$ 567.76 | \$ 4,881.81 |
| 9 | \$ 6,337.60 | \$ (1,267.52) | \$ 5,070.08 | \$ 592.77 | \$ 4,477.31 |
| 10 | \$ 5,852.15 | \$ (1,170.43) | \$ 4,681.72 | \$ 708.20 | \$ 3,973.52 |
| All Others | \$ 93,827.33 | \$ (7,813.20) | \$ 86,014.13 | \$ 17,697.54 | \$ 68,136.59 |
| Totals | \$315,338.97 | \$ (52,295.53) | \$263,043.44 | \$ 49,297.02 | \$213,746.42 |

Although the Center received discounts from some medical providers, we believe it could obtain more competitive prices for medical services if it negotiated with its medical providers. For these reasons, we found reasonable cause to determine that the Center's practice of paying for medical services resulted in gross waste of public funds.

The \$213,746.42 in medical costs the Center paid in excess of what the Hospital would have paid represents a review of only 10 percent of payments made by the Center. We acknowledge that some emergency medical procedures cannot be anticipated, making entering into contracts with some medical providers unfeasible. We also acknowledge that Hospital patients are different in nature than Center residents, resulting in the Center's inability to attain Hospital contract prices. Nevertheless, we believe the Center could spend significantly less on medical services in the future by requiring competitive bids from the providers or negotiating for more competitive prices.

AGENCY'S PLAN OF RESOLUTION

Thank you for the opportunity to review and respond to the draft report by the State Auditor's Office on Whistleblower Case No. 11-027.

The Washington State Auditor's office presented the preliminary draft report for the above referenced Whistleblower case related to the Special Commitment Center's (SCC) payments for non-contracted medical services, on October 21, 2011.

The department disagrees with the conclusions and findings in the preliminary draft report. We have three areas of concern: 1) The assumption that contracting for medical services for SCC residents is currently feasible; 2) the comparison of medical costs between Western State Hospital (WSH) and SCC; and 3) the assumption that contracting for these services today would represent a savings to the state.

I wish to point out that of the approximately \$7 million SCC resident medical services total expenditure, over \$4 million is currently under contract. SCC will continue to pursue opportunities to increase this number, but only when feasible and only when contracting represents a savings for the state and is in the state's best interest. SCC's current efforts to engage providers who are willing to serve this special population have been unsuccessful. However, SCC will continue its efforts for the remainder of this year while pursuing additional opportunities we believe we now have which are addressed at the end of this letter.

First, as you know, SCC serves a unique population in a very unique setting on McNeil Island. SCC exists because its residents have been detained or committed as sexually violent predators (SVPs) and deemed unsafe to be in Washington communities. This makes obtaining community-based services, including medical services, difficult to obtain. Past attempts to enter into contracting relationships have been unsuccessful primarily for this reason.

Secondly, the department fundamentally disagrees with the comparison of SCC to what Western State Hospital "would have paid" for medical services under contract. Again, SCC serves a unique population and unlike WSH, a federally supported institution with eligible patients, neither SCC nor its providers can bill Medicare or Medicaid.

In addition, the draft report assumes contracting for SCC medical services would represent a savings for the state. It is feasible; again, based on the unique population SCC serves, contracting for these services would be more expensive than the rates currently being paid. Previous attempts to enter into conversations with providers have been met with resistance based on clientele and concern about the safety of other patients and provider staff. The difficulty in securing contracts for other services and their associated costs suggest the department would experience similar issues with medical service contracts.

Also, as part of our ongoing efforts to be as efficient as possible with limited state resources, SCC will pursue the following as a means of achieving additional costs savings. By FY12 SCC will formalize their medical services contracting efforts by submitting a Request for Information (RFI) and will work with the Health Care Authority to pursue additional opportunities to deliver these services. Additionally, SCC will actively pursue efforts to satellite on existing Department of Corrections contracts with local community based medical providers when doing so is viable and will achieve cost savings. I need to reiterate however, that it should not be assumed that those efforts will achieve cost savings for the state and we will not enter into contracts if they do not.

Finally, with the Affordable Care Act expansion of Medicaid in 2014, we believe we will have an opportunity to get Medicaid reimbursement since our population is likely to be made up of persons who will be eligible.

Thank you for this opportunity to engage with you regarding SCC and our medical costs. We each are highly committed to achieving the proper stewardship of state dollars.

STATE AUDITOR'S OFFICE REMARKS

We thank Agency officials and personnel for their assistance and cooperation during the investigation. We also appreciate its commitment to exploring ways to enter into contractual agreements with medical providers. Such contracts are important to ensure that providers are accountable for the services they agree to provide and bill only for procedures allowed by the contract.

We acknowledge the Center has contracts with on-island medical service providers. However, we reaffirm our position that we believe contracts with medical providers for off-island medical services will result in cost-savings. We do not assert that the Center could get identical discounts as the Hospital, nor do we assert that the Center's and Hospital's clientele are similar. Our comparison was done only to illustrate that contract negotiations likely would yield more competitive rates.

Regarding the Center's statement that it has attempted to enter into contracts for these services, it could provide no evidence this occurred.

Whistleblower Investigation Criteria

State of Washington Department of Social and Health Services Thurston County

We came to our determination in this investigation by evaluating the facts against the criteria below:

Assertion 1:

RCW 43.88.160 Fiscal Management – Powers and duties of officers and agencies.

(4) In addition, the director of financial management, as agent of the governor, shall:

(a) Develop and maintain a system of internal controls and internal audits comprising methods and procedures to be adopted by each agency that will safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies for accounting and financial controls. ...

State Administrative and Accounting Manual, Section 16.20.15.a.

Written contract. All client service contracts, regardless of dollar amount, require a **written** document specifying the agreement between the agency and the contractor.

Required elements in a client service contract are:

- Identification of all parties to the contract;
- Scope of services that clearly describes the responsibilities and obligations of the parties including for performance-based contracts, deliverables, performance measures or outcomes;
- Maximum compensation, when applicable;
- Period of performance; including start and end dates or a statement, for example, that the end date is two years from the start date;
- Payment mechanism that describes the basis on which the contractor will be paid for services whether an hourly/daily/weekly/monthly rate, by deliverable, completion of a project phase or milestone, achievement of a performance target or outcome, or lump sum, etc; for performance-based contracts, payment is tied to performance; and
- Signatures of all responsible parties.

Numerous other terms are often included in the contract documents to provide additional legal protection to the State. ...

Assertion 2:**RCW 42.40.020 Definitions**

As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

- (5) “Gross waste of funds” mean to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.”

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